



Individual and Employer Rights and Responsibilities

July 23, 2012

What rights and responsibilities are attributed to the consumer and the employer and how will COHBE protect them?

Goals/Objectives of COHBE:

- Fulfill the mission outlined in SB-200 to increase access, affordability and choice to individuals and employers purchasing health insurance in Colorado.
- Protect individual and employer rights and responsibilities
- Comply with applicable state and federal laws
- Meet the Exchange implementation timeline

Background:

The core of the question centers on what rights and responsibilities are granted and expected of individuals and employers as required under applicable law and according to best practices. COHBE must respect and protect the rights of individuals and employers when they shop and enroll in plans through the Exchange. Conversely, individuals and employers have a set of expected responsibilities related to obtaining health insurance through the Exchange.

COHBE will outline the rights and responsibilities, specific to the individual and to the employer, when they participate on the Exchange over the next 6-12 months. Many of these rights and responsibilities are outlined in law and summarized in Appendix 1. COHBE will also define a process for communicating and protecting people's rights and responsibilities. The recommendations that follow are intended to guide COHBE's approach to employer and individual rights and responsibilities.

Applicable law:

Colorado

SB11-200

"The intent of the Colorado Health Benefit Exchange is to increase access, affordability, and choice for individuals and small employers purchasing health insurance in Colorado."

"(k) investigate requirements, develop options, and determine waivers, if appropriate, to ensure that the best interests of Coloradans are protected."

Federal

In summary, the federal law requires that Exchanges “must” provide specific types of services and communications to small employers and individuals. As a result, these responsibilities for the Exchange become rights for the small employers and individuals. See Appendix 1 for more details about the rights and responsibilities outlined in applicable law.

Small employers, for example, have a right to receive a fair application process, consistent billing, reasonable time periods for selection of plans, and the right to continue using the Exchange even if the business grows so much that they are no longer a “small employer” by strict definition. In terms of responsibilities, small employers must follow the requirements, processes, and timelines for plan selection and employee enrollment as defined by the Exchange. They also have a responsibility to provide documentation to address any inconsistencies the Exchange finds in the application, along with a number of other responsibilities.

Individuals refer to people purchasing on the individual Exchange. Employees refer to people purchasing on the SHOP exchange through their small employer. In both cases, individuals and employees also have a defined set of rights and responsibilities. Most notably, federal law requires, “An applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month.” The individual must pay a penalty if they cannot demonstrate they have adequate coverage. In addition to these responsibilities, individuals have the right to shop on the Exchange if they are a qualified individual or employee. They have the right to notification regarding their eligibility verification and the subsequent right to appeal the decision regarding their eligibility determination.

This is not an exhaustive list of rights and responsibilities for neither the small employers nor the individuals, but rather this should service as a representative sample of the detailed legal verbiage available in the appendix.

Recommended Guiding Principles:

- COHBE will protect the rights of small employers and individuals by complying with all state and federal laws that grant them rights and outline responsibilities.
- In the case that a small employer or individual believes their rights have been violated, COHBE will facilitate a phone or in-person discussion with the offended party to address the issue prior to formal legal proceedings.
- COHBE will provide educational materials to small employers and individuals regarding their rights and responsibilities when they participate in the Exchange.
- COHBE service representatives will be trained to answer questions and inform people about their rights and responsibilities.

Appendix 1

Three types of parties will be referenced throughout the rights and responsibilities, which are defined as:

Individual – Any individual who uses the Exchange and does NOT participate through a small employer

Small Employer – A small employer (businesses and non-profits with up to 50 full-time equivalent employees) seeking to utilize the Exchange

Employee – Any individual who participates in the Exchange through his / her small employer

Right / Responsibility	Regulation
<p>Responsibilities</p> <ul style="list-style-type: none"> The federal government will require most Americans to have health insurance starting in 2014. 	<p>SEC. 5000A.</p> <p>(a) REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL COVERAGE.—An applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month.</p> <p>(b) SHARED RESPONSIBILITY PAYMENT.—</p> <p>(1) IN GENERAL.—Replaced by section 10106(b) If a taxpayer who is an applicable individual, or an applicable individual for whom the taxpayer is liable under paragraph (3), fails to meet the requirement of subsection (a) for 1 or more months, then, except as provided in subsection (e), there is hereby imposed on the taxpayer a penalty with respect to such failures in the amount determined under subsection (c).</p>
<p>Rights</p> <ul style="list-style-type: none"> Small Employers have a right to have access to an Exchange. 	<p>§155.700 Standards for the establishment of a SHOP.</p> <p>General requirement. An Exchange must provide for the establishment of a SHOP that meets the requirements of this subpart and is designed to assist qualified employers and facilitate the enrollment of qualified employees into qualified health plans.</p>
<p>Rights</p> <ul style="list-style-type: none"> Small employers have the right to select a level of coverage and to offer any of the QHPs in that level to their employees. Small employers have the right to have premiums aggregated through the SHOP. Small employers have a right to have confirmation that all plans in the Exchange are QHPs. Individuals and employees have the right to use a premium calculator to compare QHPs as described in §155.705 (11). 	<p>§155.705 Functions of a SHOP.</p> <p>(2) Employer choice requirements. With regard to QHPs offered through the SHOP, the SHOP must allow a qualified employer to select a level of coverage as described in section 1302(d)(1) of the Affordable Care Act, in which all QHPs within that level are made available to the qualified employees of the employer.</p> <p>(4) Premium aggregation. The SHOP must perform the following functions related to premium payment administration:</p> <ul style="list-style-type: none"> (i) Provide each qualified employer with a bill on a monthly basis that identifies the employer contribution, the employee contribution, and the total amount that is due to the QHP issuers from the qualified employer; (ii) Collect from each employer the total amount due and make payments to QHP issuers in the SHOP for all enrollees; and (iii) Maintain books, records, documents, and other evidence of accounting procedures and practices of the premium aggregation program for each benefit year for at least 10 years. <p>(5) QHP Certification. With respect to certification of QHPs in the small group market, the SHOP must ensure each QHP meets the requirements specified in §156.285 of this subchapter.</p>

	<p>(11) Premium calculator. In the SHOP, the premium calculator described in §155.205(b)(6) must facilitate the comparison of available QHPs after the application of any applicable employer contribution in lieu of any advance payment of the premium tax credit and any cost-sharing reductions.</p>
<p>Rights</p> <ul style="list-style-type: none"> • Small employers that meet the employer eligibility requirements as specified in §155.710(b) have a right to purchase coverage through a SHOP Exchange. • If a small employer meets the criteria in §155.710(b)(3)(ii), it has the right to offer coverage to those employees whose primary worksite is in the SHOP’s service area. • A qualified employer has the right to continue to utilize the Exchange if it ceases to be a small employer only due to an increase in number of employees. 	<p>§155.710 Eligibility standards for SHOP.</p> <p>(a) General requirement. The SHOP must permit qualified employers to purchase coverage for qualified employees through the SHOP.</p> <p>(b) Employer eligibility requirements. An employer is a qualified employer eligible to purchase coverage through a SHOP if such employer –</p> <ol style="list-style-type: none"> (1) Is a small employer; (2) Elects to offer, at a minimum, all full-time employees coverage in a QHP through a SHOP; and (3) Either – <ul style="list-style-type: none"> (i) Has its principal business address in the Exchange service area and offers coverage to all its full-time employees through that SHOP; or (ii) Offers coverage to each eligible employee through the SHOP serving that employee’s primary worksite. <p>(c) Participating in multiple SHOPS. If an employer meets the criteria in paragraph (b) of this section and makes the election described in (b)(3)(ii) of this section, a SHOP shall allow the employer to offer coverage to those employees whose primary worksite is in the SHOP’s service area.</p> <p>(d) Continuing eligibility. The SHOP must treat a qualified employer which ceases to be a small employer solely by reason of an increase in the number of employees of such employer as a qualified employer until the qualified employer otherwise fails to meet the eligibility criteria of this section or elects to no longer purchase coverage for qualified employees through the SHOP.</p> <p>(e) Employee eligibility requirements. An employee is a qualified employee eligible to enroll in coverage through a SHOP if such employee receives an offer of coverage from a qualified employer.</p> <p>Subpart C – Standards for Qualified Employers</p> <p>§157.200 Eligibility of qualified employers to participate in a SHOP.</p> <p>(b) Continuing participation for growing small employers. A qualified employer may continue to participate in the SHOP if it ceases to be a small employer in accordance with §155.710 of this subchapter.</p>
<p>Rights</p> <ul style="list-style-type: none"> • Small employers and employees have the right to use and submit the single applications as set by the standards of §155.730. 	<p>§155.715 Eligibility determination process for SHOP.</p> <p>(b) Applications. The SHOP must accept a SHOP single employer application form from employers and the SHOP single employee application form from employees wishing to elect coverage through the SHOP, in accordance with the relevant standards of §155.730.</p>

<ul style="list-style-type: none"> • Small employers and employees have the right to only submit the minimum required information for eligibility in accordance with §155.710. • Small employers and employees have the right to be notified if the Exchange finds an inconsistency with their application. • Small employers and employees have the right to be granted 30 days to submit evidence to support an alleged application inconsistency. • Small employers and employees have the right to be informed if their application is denied. • Small employers and employees have the right to be informed of an eligibility approval or denial and the right to be informed of the appeals process. • Employees have the right to be notified that their employer has withdrawn from the Exchange and the right to information on other source of coverage. <p>Responsibilities</p> <ul style="list-style-type: none"> • Small employers and employees are required to self-attest information that is accurate to the best of their knowledge. 	<p>(c) Verification of eligibility. For the purpose of verifying employer and employee eligibility, the SHOP –</p> <ul style="list-style-type: none"> (1) Must verify that an individual applicant is identified by the employer as an employee to whom the qualified employer has offered coverage and must otherwise accept the information attested to within the application unless the information is inconsistent with the employer provided information; (3) Must collect only the minimum information necessary for verification of eligibility in accordance with the eligibility standards described in §155.710; <p>(d) Eligibility adjustment period.</p> <ul style="list-style-type: none"> (1) When the information submitted on the SHOP single employer application is inconsistent with the eligibility standards described in §155.710, the SHOP must – <ul style="list-style-type: none"> (ii) Notify the employer of the inconsistency; (iii) Provide the employer with a period of 30 days from the date on which the notice described in paragraph (d)(1)(ii) of this section is sent to the employer to either present satisfactory documentary evidence to support the employer’s application, or resolve the inconsistency; and (iv) If, after the 30-day period described in paragraph (d)(1)(iii) of this section, the SHOP has not received satisfactory documentary evidence, the SHOP must – <ul style="list-style-type: none"> (A) Notify the employer of its denial of eligibility in accordance with paragraph (e) of this section and of the employer’s right to appeal such determination; and (2) For an individual requesting eligibility to enroll in a QHP through the SHOP for whom the SHOP receives information on the application inconsistent with the employer provided information, the SHOP must – <ul style="list-style-type: none"> (i) Make a reasonable effort to identify and address the causes of such inconsistency, including through typographical or other clerical errors; (ii) Notify the individual of the inability to substantiate his or her employee status; (iii) Provide the employee with a period of 30 days from the date on which the notice described in paragraph (d)(2)(ii) of this section is sent to the employee to either present satisfactory documentary evidence to support the employee’s application, or resolve the inconsistency; and (iv) If, after the 30-day period described in paragraph (d)(2)(iii) of this section, the SHOP has not received satisfactory documentary evidence, the SHOP must notify the employee of its denial of eligibility in accordance with paragraph (f) of this section. <p>(e) Notification of employer eligibility. The SHOP must provide an employer requesting eligibility to purchase coverage with a notice of approval or denial of eligibility and the employer’s right to appeal such eligibility determination.</p> <p>(f) Notification of employee eligibility. The SHOP must notify an employee seeking to enroll in a QHP offered through the SHOP of the determination by the SHOP whether the individual is eligible in accordance with §155.710 and the employee’s right to</p>
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	<p>appeal such determination.</p> <p>(g) Notification of employer withdrawal from SHOP. If a qualified employer ceases to purchase coverage through the SHOP, the SHOP must ensure that –</p> <ol style="list-style-type: none"> (1) Each QHP terminates the coverage of the employer’s qualified employees enrolled in the QHP through the SHOP; and (2) Each of the employer’s qualified employees enrolled in a QHP through the SHOP is notified of the termination of coverage prior to such termination. Such notification must also provide information about other potential sources of coverage, including access to individual market coverage through the Exchange. <p>§155.730 Application standards for SHOP.</p> <p>(a) General requirements. Application forms used by the SHOP must meet the requirements set forth in this section.</p> <p>(b) Single employer application. The SHOP must use a single application to determine employer eligibility and to collect information necessary for purchasing coverage. Such application must collect the following –</p> <ol style="list-style-type: none"> (1) Employer name and address of employer’s locations; (2) Number of employees; (3) Employer Identification Number (EIN); and (4) A list of qualified employees and their taxpayer identification numbers. <p>(c) Single employee application. The SHOP must use a single application for eligibility determination, QHP selection and enrollment for qualified employees and their dependents.</p> <p>(f) Filing. The SHOP must allow an employer to file the SHOP single employer application and employees to file the single employee application in the form and manner described in §155.405(c).</p> <p>(g) Additional safeguards. The SHOP may not provide to the employer any information collected on the employee application with respect to spouses or dependents other than the name, address, and birth date of the spouse or dependent.</p>
<p>Rights</p> <ul style="list-style-type: none"> • Small employers and employees have the right to a uniform enrollment timeline and process as defined in §155.720(b) and §155.725(a). • Qualified employees have the right to have their enrollment information transferred to the carrier by the Exchange. • Qualified employees have the right to be notified of their plan’s effective dates from the carrier. 	<p>§155.720 Enrollment of employees into QHPs under SHOP.</p> <p>(a) General requirements. The SHOP must process the SHOP single employee applications of qualified employees to the applicable QHP issuers and facilitate the enrollment of qualified employees in QHPs. All references to QHPs in this section refer to QHPs offered through the SHOP.</p> <p>(b) Enrollment timeline and process. The SHOP must establish a uniform enrollment timeline and process for all QHP issuers and qualified employers to follow, which includes the following activities that must occur before the effective date of coverage for qualified employees:</p> <ol style="list-style-type: none"> (1) Determination of employer eligibility for purchase of coverage in the SHOP as described in §155.715; (2) Qualified employer selection of QHPs offered through the SHOP to qualified employees, consistent with §155.705(b)(2) and (3); (3) Provision of a specific timeframe during which the qualified employer can select the level of coverage or QHP offering, as appropriate; (4) Provision of a specific timeframe for qualified employees to provide relevant information to complete the application process;

<ul style="list-style-type: none"> • Small employers have the right to be notified by the Exchange if one of their employees terminates coverage from a QHP. <p>Responsibilities</p> <ul style="list-style-type: none"> • Small employers have the responsibility to submit their contributions to the Exchange in a timely manner. 	<ul style="list-style-type: none"> (5) Determination and verification of employee eligibility for enrollment through the SHOP; (6) Processing enrollment of qualified employees into selected QHPs; and (7) Establishment of effective dates of employee coverage. <p>(c) Transfer of enrollment information. In order to enroll qualified employees of a qualified employer participating in the SHOP, the SHOP must –</p> <ul style="list-style-type: none"> (1) Transmit enrollment information on behalf of qualified employees to QHP issuers in accordance with the timeline and process described in paragraph (b) of this section; and (2) Follow requirements set forth in §155.400(c) of this part. <p>(d) Payment. The SHOP must –</p> <ul style="list-style-type: none"> (1) Follow requirements set forth in §155.705(b)(4) of this part; and (2) Terminate participation of qualified employers that do not comply with the process established in §155.705(b)(4). <p>(e) Notification of effective date. The SHOP must ensure that a QHP issuer notifies a qualified employee enrolled in a QHP of the effective date of coverage consistent with §156.260(b).</p> <p>(h) Employee termination of coverage from a QHP. If any employee terminates coverage from a QHP, the SHOP must notify the employee’s employer.</p>
<p>Rights</p> <ul style="list-style-type: none"> • Qualified small employers have the right to purchase coverage at any point during the year with their own unique effective dates for a period of 12 months. • Qualified small employers have a right to an annual election period as specified in §155.725(c). • Qualified small employers have the right to be notified of the annual election period before it begins. • Qualified employees have the right to a standardized enrollment period and notice of such period as defined in §155.725(e)(f). • Newly qualified employees have a right to an enrollment period beginning on the first day of becoming a qualified employee. 	<p>§155.725 Enrollment periods under SHOP.</p> <p>(a) General requirements. The SHOP must –</p> <ul style="list-style-type: none"> (1) Adhere to the start of the initial open enrollment period set forth in §155.410; (3) Provide the special enrollment periods described in §155.420 excluding paragraphs (d)(3) and (6). <p>(b) Rolling enrollment in the SHOP. The SHOP must permit a qualified employer to purchase coverage for its small group at any point during the year. The employer’s plan year must consist of the 12-month period beginning with the qualified employer’s effective date of coverage.</p> <p>(c) Annual employer election period. The SHOP must provide qualified employers with a period of no less than 30 days prior to the completion of the employer’s plan year and before the annual employee open enrollment period, in which the qualified employer may change its participation in the SHOP for the next plan year, including –</p> <ul style="list-style-type: none"> (1) The method by which the qualified employer makes QHPs available to qualified employees pursuant to §155.705(b)(2) and (3); (2) The employer contribution towards the premium cost of coverage; (3) The level of coverage offered to qualified employees as described in §155.705(b)(2) and (3); and (4) The QHP or QHPs offered to qualified employees in accordance with §155.705. <p>(d) Annual employer election period notice. The SHOP must provide notification to a qualified employer of the annual election period in advance of such period.</p> <p>(e) Annual employee open enrollment period. The SHOP must establish a standardized annual open enrollment period of no less than 30 days for qualified employees prior to the completion of the applicable qualified employer’s plan year and after that employer’s annual election period.</p>

<ul style="list-style-type: none"> • Qualified employees have the right to consistent effective dates as described in §155.725(h). • Qualified employees have the right to be enrolled in the same QHP from their previous enrollment unless one of the circumstances outlined in §155.725(i) is applicable. <p>Responsibilities</p> <ul style="list-style-type: none"> • Small employers and employees are responsible for adhering to the open enrollment and special enrollment periods. 	<p>(f) Annual employee open enrollment period notice. The SHOP must provide notification to a qualified employee of the annual open enrollment period in advance of such period.</p> <p>(g) Newly qualified employees. The SHOP must provide an employee who becomes a qualified employee outside of the initial or annual open enrollment period an enrollment period to seek coverage in a QHP beginning on the first day of becoming a qualified employee.</p> <p>(h) Effective dates. The SHOP must establish effective dates of coverage for qualified employees consistent with the effective dates of coverage described in §155.720.</p> <p>(i) Renewal of coverage. If a qualified employee enrolled in a QHP through the SHOP remains eligible for coverage, such employee will remain in the QHP selected the previous year unless –</p> <ol style="list-style-type: none"> (1) The qualified employee terminates coverage from such QHP in accordance with standards identified in §155.430; (2) The qualified employee enrolls in another QHP if such option exists; or (3) The QHP is no longer available to the qualified employee.
<p>Responsibilities</p> <ul style="list-style-type: none"> • Small employers are responsible for seeking qualification prior to SHOP participation. 	<p>Subpart C – Standards for Qualified Employers</p> <p>§157.200 Eligibility of qualified employers to participate in a SHOP.</p> <p>(a) General requirement. Only a qualified employer may participate in the SHOP in accordance with §155.710 of this subchapter.</p>

<p>Responsibilities</p> <ul style="list-style-type: none"> • A qualified small employer is responsible for complying with the requirements, processes, and timelines set forth in §157.205. • A qualified small employer is responsible for sharing information with its qualified employees about the process to enroll in a QHP through SHOP. • A qualified small employer is responsible for submitting its premium contribution in adherence with the processes in §155.705. • A qualified small employer is responsible for allowing a new qualified employee to seek coverage on the first day of becoming a new employee. • A qualified small employer is responsible for informing any new qualified employees about their enrollment options. • A qualified small employer is responsible for notifying the SHOP if any of its qualified employee has a change in eligibility status according to §157.205(f). • A qualified small employer is responsible for adhering to the annual employer election period. 	<p>§157.205 Qualified employer participation process in a SHOP.</p> <p>(a) General requirements. When joining the SHOP, a qualified employer must comply with the requirements, processes, and timelines set forth by this part and must remain in compliance for the duration of the employer’s participation in the SHOP.</p> <p>(c) Information dissemination to employees. A qualified employer participating in the SHOP must disseminate information to its qualified employees about the process to enroll in a QHP through the SHOP.</p> <p>(d) Payment. A qualified employer must submit any contribution towards the premiums of any qualified employee according to the standards and processes described in §155.705 of this subchapter.</p> <p>(e) Employees hired outside of the initial or annual open enrollment period. Qualified employers must provide employees hired outside of the initial or annual open enrollment period with:</p> <ul style="list-style-type: none"> (1) A period to seek coverage in a QHP beginning on the first day of becoming a qualified employee; and (2) Information about the enrollment process in accordance with §155.725 of this subchapter. <p>(f) New employees and changes in employee eligibility. Qualified employers participating in the SHOP must provide the SHOP with information about dependents or employees whose eligibility status for coverage purchased through the employer in the SHOP has changed, including:</p> <ul style="list-style-type: none"> (1) Newly eligible dependents and employees; and (2) Loss of qualified employee status. <p>(g) Annual employer election period. Qualified employers must adhere to the annual employer election period to change their program participation for the next plan year described in §155.725(c) of this subchapter.</p>
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